

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT Z-1 240 828
Issued to: "L" "V" BEY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2189

"L" "V" BEY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 9 July 1978, an Administrative Law Judge of the United States Coast Guard at San Francisco, revoked Appellant's Merchant Mariner's Document upon finding him guilty of misconduct. The specification found proved alleges that while serving under the authority of his document aboard USNS MISPELLION on or about 4 September 1977, while on U.S. Naval Base, Subic Bay, Republic of the Philippines, Appellant did have in his possession a narcotic drug, to wit: heroin.

At the hearing, which comprised nine sessions, Appellant was at first represented by lay counsel but later retained professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence nineteen exhibits.

Appellant submitted no defense.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved and revoked all documents and licenses issued to Appellant.

The entire decision and order was served on 17 July 1978. Appeal was timely filed.

FINDINGS OF FACT

Appellant, at all times material hereto, was a civilian crewman aboard USNS MISPELLION, T-AO 105, a public vessel of the United States operated by the Military Sealift Command. Appellant was serving aboard the vessel under the authority of his duly issued Merchant Mariner's Document No. Z-124 0828, possession of which was a condition of his employment. At the time in question,

the vessel lay moored at U.S. Naval Base Subic Bay, Republic of the Philippines.

No further findings are appropriate in light of the disposition of the evidentiary issues raised by Appellant's brief.

BASES OF APPEAL

This appeal has been taken from the order of the Administrative Law Judge. As grounds for appeal, Appellant asserts:

- I The constitutional right to be protected from unreasonable searches and seizures may be raised for the first time on appeal;
- II Appellant's Fourth Amendment rights were violated by the search conducted, and the products of such a search should be excluded;
- III The purported deposition of Pvt. Winesette should be excluded for lack of signature, certification, and authentication; and,
- IV Respondent was deprived of his due process right to a fair and impartial hearing.

APPEARANCE: Henning and Walsh, San Francisco, California, by Jeffrey Walsh, Esq.

OPINION

I

Because of the disposition of the evidentiary questions posed in this case, it is unnecessary to reach the constitutional issues raised in Appellant's exceptions.

II

The purported deposition of Pvt. Winsette does not comply with the requirements of 46 CFR 5.20-140(f) with respect to the subscription of the party deposed or certification by the person taking the deposition. The standard enunciated in the regulation is clear and unequivocal and the good-faith effort by the Investigating Officer to provide a properly executed deposition does not save Coast Guard Exhibit 19 from being inadmissible. The attempt was made here to fabricate a document comporting with the regulations by severing the identifying and authenticating material from one document and consolidating it with substantive,

evidentiary material severed from another unauthenticated document. The creation was, of course, inadmissible.

III

The Investigating Officer also introduced evidence, over the objection of Appellant, consisting of chain of custody receipts which culminated in a laboratory analysis report on the substance allegedly taken from Appellant. It is clear that these documents, if material and relevant, are admissible under 28 U.S.C. 1732. However, Appellant aptly noted in the record certain inconsistencies on the face of the documents. TR.-136. One document indicates that the sample was in the hands of the laboratory from 6 September through 27 September. Another of the custody documents states that the sample was under the control of a Naval Investigative Service agent on the 24th of September. The 24 September transfer documented is contradictory of the chain and renders the series of documents defective as competent evidence.

It may be that proper depositions might have sufficed to explain the irregularities in the chain, but standing alone this evidence is not reliable and probative.

CONCLUSION

It was error for the Administrative Law Judge to admit the purported deposition of Pvt. Winsette, and the chain of custody documents were defective on their face. Absent this matter, the record is devoid of any substantial evidence of probative value which could sustain the order of the Administrative Law Judge. The prospect of obtaining proper evidence is too remote to authorize a rehearing.

ORDER

On the basis of the foregoing authorities and reasons, therefore the findings of the Administrative Law Judge are SET ASIDE, the order VACATED, and the charges are DISMISSED.

R. H. SCARBOROUGH
VICE ADMIRAL U. S. COAST GUARD
ACTING COMMANDANT

Signed at Washington, D.C., this 25th day of MARCH 1980.

Depositions

must comply with regulation

Evidence

Chain of Custody defective

deposition, must comply with regulations